**IN THE HIGH COURT OF PUNJAB AND HARYRNA AT CHANDIGARH**

**R.S.A.No.29 of 2006**
**Date of Decision:- 22.09.2006**

M/s Durga Iron Store ....Appellant.

through
Mr.Satinder Khanna, Advocate

vs.

Gurnam Singh & ors. ....Respondents

through
Mr.Kanwaljit Singh, Advocate
for No.2.

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**CORAM:-HON'BLE MR.JUSTICE SURYA KANT**

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**SURYA KANT, J.**

This regular second appeal is directed against the judgments and decrees dated 12.12.2003 and 29.9.2005 passed by the learned Civil Judge (Jr.Division), Ludhiana and learned Additional District Judge, Ludhiana respectively, whereby suit for decree of perpetual injunction filed by the appellant was partly decreed by the learned trial Court while the appeal has been dismissed by the First Appellate Court.

The aforesaid suit was filed on the premise that the appellant is a tenant in the first and second floor of the subject property, which was allegedly purchased by defendant No.2, who is threatening to raise construction over the tenanted portion which would amount to forcible dispossession of the plaintiff.

Only defendant-respondent No.2 contested the suit and denied that the plaintiff-appellant is in possession of the stairs or the open terrace and latrine constructed on the second floor. It was averred that these are

common amenities provided to each and every tenant.

On a consideration of the oral as well as documentary evidence led by both the parties, the First Appellate Court has returned a firm finding of fact that the stairs and open terrace were not part of the tenanted premises and were being used for common purposes only. It has been further held that the plaintiff-appellant has been rented only one store and the *chaubara* in the building. As regards to the alleged admission made by defendant-respondent No.1, the learned First Appellate Court has observed and rightly so that since he had sold the subject property, he had no right or interest in the property and as such his admission was of no consequence.

Giving preference to the documentary evidence in order to strengthen its findings, the learned First Appellate Court has held that the latrine, stairs and open terrace does not form part of the tenancy and these being for the common use, the injunction as sought by the plaintiff, cannot be granted.

As may be noticed from the above summarised findings, the same are pure and simple findings of fact returned by both the Courts and do not give rise to any substantial question of law warranting any interference by this Court.

Consequently, I do not find any merit in this appeal and the same is dismissed.

September 22, 2006 **( SURYA KANT )**
poonam **JUDGE**